

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Obed Alvarado Merced

v.

Civil No. 15-cv-313-PB

Warden Esker L. Tatum, Jr.,
Federal Correctional Institution,
Berlin, New Hampshire

REPORT AND RECOMMENDATION

Obed Alvarado Merced, a prisoner at the Federal Correctional Institution in Berlin, New Hampshire ("FCI-Berlin"), has filed a petition for a writ of habeas corpus (doc. no. 1), pursuant to 28 U.S.C. § 2241, challenging his transfer to FCI-Berlin by the Bureau of Prisons. The matter is before this magistrate judge for preliminary review, to determine whether the petition is facially valid and may proceed. See Rule 4 of the Rules Governing Section 2254 Cases ("§ 2254 Rules"); § 2254 Rule 1(b) (authorizing court to apply § 2254 Rules to § 2241 petitions); LR 4.3(d)(4)(A).

Standard

In undertaking § 2254 Rule 4 preliminary review, this court decides whether the petition contains sufficient factual matter, accepted as true, to state a facially valid claim to relief that is cognizable in a federal habeas action. See McFarland v.

Scott, 512 U.S. 849, 856 (1994). When a habeas petitioner is proceeding pro se, the assertions contained in the petition are construed liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam).

Discussion

I. Claims

Alvarado Merced asserts that his transfer to FCI-Berlin violated his right to due process and involved discrimination and unprofessional conduct. He seeks habeas relief on those claims.¹

II. Due Process Claim

Alvarado Merced asserts that, prior to his transfer to FCI-Berlin - a medium security facility - he was held in a different medium security prison. Alvarado Merced asserts he was "led to believe" he would be transferred to a lower security level institution, as he has "low custody points." Alvarado Merced

¹For purposes of preliminary review, the court assumes, without deciding, that Alvarado Merced's claims are appropriately raised in a § 2241 petition. See Muniz v. Sabol, 517 F.3d 29, 33-34 (1st Cir. 2008) (section 2241 granted federal courts jurisdiction over habeas petitions filed by federal prisoners challenging BOP's implementation of rules that delayed their transfers to community corrections centers). Had Alvarado Merced's claims been raised in a civil rights case, they would fare no better as Alvarado Merced has failed to plead sufficient facts to show any violation of his federal rights.

alleges that he did not receive a hearing or other due process prior to his transfer to FCI-Berlin.

To establish that his due process rights have been violated, Alvarado Merced must demonstrate that he has suffered a deprivation of a protected liberty interest. A federal prisoner has no constitutionally protected interest in his place of confinement, see Olim v. Wakinekona, 461 U.S. 238, 250 (1983), or in a particular security classification. See Meachum v. Fano, 427 U.S. 215, 224 (1976); see also Moody v. Daggett, 429 U.S. 78, 88 n. 9 (1976). Federal law, 18 U.S.C. § 3621(b), requires individualized determinations of inmate circumstances, see Muniz v. Sabol, 517 F.3d 29, 36 (1st Cir. 2008), while affording "the BOP wide discretion to choose any 'appropriate and suitable' facility, 'considering' five factors," broadly categorized as "the facility, the offense, the prisoner, any statement of the sentencing court, and any pertinent policy statement issued by the Sentencing Commission," id. at 32. "[T]he BOP 'may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another.'" Id. (quoting 18 U.S.C. § 3621(b)).

Alvarado Merced has not alleged facts showing that his transfer violated his rights under any federal law or otherwise

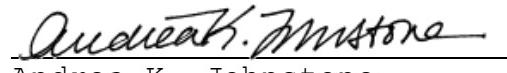
deprived him of a protected liberty interest. Accordingly, Alvarado Merced's due process claim should be dismissed.

III. Discrimination and Unprofessionalism Claims

Alvarado Merced states that he was "discriminated against and handled unprofessionally." Alvarado Merced has failed to state any facts to support these claim, and the court does not credit bald, conclusory assertions of an equal protection violation. The discrimination and unprofessionalism claims should be dismissed for failing to state viable claims.

Conclusion

For the foregoing reasons, Alvarado Merced's petition should be dismissed. Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's order. See Garayalde-Rijos v. Mun. of Carolina, 747 F.3d 15, 21-22 (1st Cir. 2014).


Andrea K. Johnstone
United States Magistrate Judge

March 14, 2016
cc: Obed Alvarado Merced, pro se